Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 10. OCTOBER, 1903. NO. 5.

CASE AND COMMENT

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

NEW YORK, 79 Nassau St. CHICAGO, 225 Dearborn St.

Entered at post office at Rochester, N. Y., as second-class mail matter.

Orders to the Governor.

The day before the execution of the Van Wormer brothers for the crime of murder, a telegram was sent to Governor Odell, of New York, by two Buffalo lawyers, as follows: "The atrocity of killing the three Van Wormer brothers by the state of New York as planned for Thursday will hold your name up to infamy throughout civilization. For the sake of humanity, decency, and civilization, stop it." The press item which gives this incident does not give the names of the lawyers who sent the message. It is charitable to them to withhold their names. Whatever one's views may be of the wisdom or policy of capital punishment, it requires a high degree of bumptiousness and obtuseness of perception to make one guilty of attacking the governor in this way. Whether the law is a good one or not, it is the law of the state, and, while the governor could interfere, the power to do so is given him, not with the idea that he will make the law a nullity, but that he will mitigate its operation in particular cases where there is a special reason for leniency. No such reasons were apparent in this case. In refusing to interfere he acted in accordance with his official duty. Lawyers ought certainly to know that the proper method of changing the law respecting capital punishment is by legislative enactment, and not by an attempt to bulldoze the governor.

Citizens Must Know English.

A very valuable precedent in the matter of naturalizing aliens was set not long since by Judge Gregory at Albany, N. Y., when, as the press reports, he rejected sixty applicants for naturalization because they were unable to speak English. The judge is reported as saying: "I will not naturalize any person who comes before me and is unable to speak the English language sufficiently to make himself understood."

"Indecent haste" is the fair characterization of the practice of many courts heretofore in naturalizing foreigners. It has sometimes been a scandal of large proportions. Large numbers of men ignorant, not only of the English language, but of almost everything else, have been railroaded through the naturalization courts just before election by political workers of both parties. Courts have recently become more particular in most places, but there is room for more improvement. The precedent set by Judge Gregory ought to be followed strictly in every naturalization court of the land. A person who cannot understand the English language certainly lacks one essential element of fitness for citizenship in the United States. It would be well if Congress were, by statute, to make such knowledge an absolute requisite of admission to citizenship.

A Check on the Insolence of Advertisers.

One of the new statutes of New York, chap. 132, Laws 1903, makes it a misdemeanor to use the name, portrait, or picture of any living person for advertising without proper consent, and gives a remedy by equitable action and recovery of damages, which, for knowing violation of the law, may be made exemplary. This in some measure meets the demand made by CASE AND COMMENT in December, 1895, under the heading, "Advertising Brigands," in which a law was proposed to restrain such shameless advertising by the unauthorized use of another's portrait. The New York legislature has not seen fit to extend the protection to portraits of persons who are no longer living. The wretched caricatures of former Presidents or other great men whose names and memories are dear to the nation can still be used to advertise any sort of disreputable pill or device. But the name and portrait of a living person is well protected by this new statute.

The refusal of the court of appeals to sustain the suit of a girl for an injunction against the unauthorized use of her portrait for advertising purposes was the inspiration of this new statute. The name, as well as the portrait, of a person is explicitly protected by this law. The need of a statute to protect them, as CASE AND COMMENT has heretofore insisted, ought not to exist. But, since the court of New York refused relief in the case presented to it, the need of the statute in that state, at least, was pressing, and the legislature has passed no more commendable enactment.

The Law's Delays.

Twenty-one years ago last July, in a village in central New York, a brakeman on a railroad, on the roof of a box car in a train passing under a bridge of insufficient height above the track, had the misfortune to be hit by the bridge in the back of the head, and to sustain great physical injury. Within six months thereafter he brought suit against the railroad company, and in February, 1884, at the end of a trial, a jury gave him a verdict of $4,000. There was an appeal, of course, and at the end of two years more, after two arguments, the judgment was reversed, and a new trial was ordered by the general term of the supreme court. The second trial, in May, 1886, resulted in a verdict of $4,900 for the plaintiff, and, on appeal to the general term, the judgment entered thereon was affirmed. At the end of another three years, however, the court of appeals reversed, and ordered a new trial again. At the third trial, in the following May, the plaintiff was nonsuited, and, after the lapse of five years more, this nonsuit was affirmed by the general term. After about three more years' delay, again the court of appeals reversed, and ordered a new trial. The weary plaintiff faced a jury a fourth time, and recovered a verdict of $4,500, but, the appellate division, on appeal, held that the verdict was contrary to the weight of evidence, and once more ordered a new trial. A fifth, and, it will scarcely be believed, a sixth trial followed, in each of which the jury gave the plaintiff a verdict of $4,900, and each time the appellate division ordered a new trial upon the ground that the verdict was against the weight of evidence. Last summer, undaunted, the plaintiff tried his case for the seventh time, and again obtained a verdict from the jury of $4,500. Again the defendant appealed to the appellate division, but that tribunal, recognizing at last that it should no longer usurp the province of the jury, submitted with bad grace,—affirming the judgment, but setting aside the order, and denying the application for the customary extra allowance in difficult and extraordinary cases. As the railroad company may still legally go to the court of appeals, it cannot yet be said that this generation-long litigation is even now ended. There is still the possibility of another reversal and an eighth trial. The administration of justice in the state of New York does not shine with brilliancy through this history. No wonder the courts are overcrowded with business, and that it takes so long to reach results. If the unfortunate plaintiff lives long enough to realize anything upon his verdict, he can only do so through the generosity of his lawyers, who will content themselves with an inadequate recompense for tireless and able labor. As for the railroad company, whether it finally escapes a judgment or not, it would have saved its stockholders money by paying the first judgment recovered nineteen years ago.

A Careless Error.

In the editorial of our September issue on the employers' liability law, when speaking of the discrimination between employees and other persons that would result from the decision in Johnson *v.* Roach, 82 N. Y. Supp. 203, if that decision were sustained, the statute of limitations for other injured persons was spoken of as six years. This is, of course, palpably erroneous, as the Code expressly fixes the limitation for personal injuries resulting from negligence at three years. The question of the validity of the discrimination which was under discussion is not affected by the error in using the word "six" instead of "three." Nevertheless, as it was clearly an error, it needs correction.

Estoppel to Contest Divorce Decree.

A very interesting decision by the supreme court of Utah in the case of Karren *v.* Karren, 60 L. R. A. 294, decided not long ago that a woman who had consented to a decree of divorce against her in order to enable her husband to obtain a grant of property could not subsequently have the decree annulled after her husband had married another woman, although, in consideration of her consent to the decree, he had promised to remarry her after procuring the grant, and had obtained the decree by suppression of facts and by false testimony. The court held that, while the divorce thus obtained was a fraud upon the court and against public policy, it would be more against public policy to disturb the decree at the instance of either of the parties, who were *in pari delicto*, when, after the divorce, one of the parties had remarried. The court also applies the maxim that a person cannot complain of his own wrong, and, quoting from 2 Bishop, Marriage and Divorce, § 1548, says: "It would be a special novelty for a plaintiff to address the tribunal with, 'The defendant and I have been playing a trick on this court, but I discover that he has got the better of me, so please turn the tables on him.'" In a note to the case are collected the authorities on the right of a party who obtains or consents to a divorce to contest its validity. The result of the investigation of the authorities shows that, as a general rule, the party obtaining a divorce decree will not be relieved therefrom upon his own application to set it aside, for the reason that, after having induced the court to render the judgment, he is estopped from afterwards attacking it, unless, at least, his consent was obtained by fraud, mistake, or surprise. In one case, where both parties asked to have a decree set aside the relief was granted, but upon the condition that it should not affect any property rights of third parties acquired in reliance upon the decree. Closely connected with consent decrees, and often hard to be distinguished from them, are decrees collusively obtained. While the result upon an attempt to vacate them is the same, according to the weight of authority, nevertheless the principle by which that result is arrived at is somewhat different when the court decides that the transactions partake of the nature of collusion rather than consent. Consent decrees are not considered reprehensible when there are valid grounds for the divorce, but collusion is a fraud upon the court and upon the law; so that the doctrine stated in the old English case of Prudham *v.* Phillips, that, "if both parties colluded in the cheat upon the court, it was never known that either of them could vacate the judgment," has come to be a rule of law. Sometimes, however, the fraud that has been practised upon the law presents itself so strongly to the mind of the court as to outweigh the guilt of the petitioner, so that a few decisions hold that a collusive divorce may be set aside upon the application of one party, on the ground of public policy.

In collateral attacks by the parties obtaining decrees the same rule controls as upon direct applications, but a distinction is presented between void and voidable decrees, so that there is some authority for saying that, when a decree is utterly void for want of jurisdiction, it may be attacked or disregarded collaterally, even by the party obtaining it. On the other hand, however, when the specific question arises as to the right of a party who has obtained a decree to question it, the courts frequently apply the doctrine of estoppel. This is according to the weight of authority. In collateral attacks upon collusive decrees, as well as upon consent decrees, the general tendency of the decisions is to hold that no relief

can be granted, though in one case the court gave relief against a collusive decree on the ground that the applicant had agreed to it when she was ill, penniless, and abandoned, and was not *in pari delicto*.

Compromise of Divorce Suits.

A withdrawal of an action for divorce brought by the wife was held, in the recent case of Oppenheimer *v.* Collins (Wis.) 60 L. R. A. 406, to be a sufficient consideration to support a conveyance by the husband to the wife of his interest in his father's estate as against the claims of his creditors. This case, so far as it relates to the rights of creditors, is very nearly one of first impression, though there is one precedent for it in the case of Morgan *v.* Potter, 17 Hun, 403, in which it was held that transfers by a husband to his wife in consideration of her agreement to discontinue a suit then pending against him for a limited divorce, and by which the parties were thereafter to live separate, were void as against his creditors when his remaining property was not sufficient to pay his debts. On the other hand, in the English case of Hobbs *v.* Hull, 1 Cox Ch. Cas. 445, it was held that an agreement by which a husband, who had so behaved as to give his wife a right to a divorce, provided for her maintenance in order to obviate a divorce suit, would be valid, even as against the attempts of his creditors to have it set aside as fraudulent.

The more general question of the validity of compromises of pending or contemplated divorce suits where no questions arise as to the rights of creditors has been before the courts in numerous cases, one of the latest being Moayon *v.* Moayon (Ky.) 60 L. R. A. 415. In a note to this, and to the Oppenheimer Case, these authorities are discussed. The general doctrine is, of course, well established that marriage is a valid consideration for the transfer of property. Therefore, when a marriage obligation has been broken, the renewal of the relation ought to be a sufficient consideration for a contract, unless there are grounds of public policy to prevent it. This suggests a plain distinction between a compromise of a divorce suit, whereby the parties are to resume the marriage relation, and one whereby they agree to a permanent separation. But in both classes of cases the general conclusion from the authorities is that the compromise of the pending or contemplated suit is a sufficient consideration for transfers of property by the husband to the wife for her maintenance or that of her children. There have been a few cases in conflict with this conclusion, but the weight of authority is against them.

A question has arisen in some of the cases as to the necessity of a third party or trustee to the validity of a contract between husband and wife for this purpose, but in most of the cases this has not seemed to be thought necessary, and in many of them the question has not even been raised. Modern statutes have made the question obsolete in some of the states. While, therefore, the limited authority on the subject seems to deny the right of a husband to transfer property to his wife in compromise of a divorce suit, to the detriment of his creditors, it is usually held that he can make such transfers in pursuance of such a compromise, when the rights of creditors are not involved.

Index to New Notes IN LAWYERS' REPORTS, ANNOTATED,

Book 60, Parts 5 and 6.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Action.

The joinder of master and servant as defendants in an action for injuries to another servant caused by the act of the defendant servant for which the master is responsible, is held, in Howe *v.* Northern P. R. Co. (Wash.) 60 L. R. A. 949, to be proper.

Appeal.

The conduct of the assistant prosecutor on a trial for rape, in repeatedly asking the son of the accused, on cross-examination, if he had not stated to a specified person that he suspected his father of having committed a similar offense with other girls, and that such conduct on the part of the accused caused the death of the witness's mother, and that if, at such conversation, the witness did not cry out and say: "I cannot go against my father even if he is guilty,"—is held, in State *v.* Irwin (Idaho) 60 L. R. A. 716, to be ground for reversal.

Associations.

Power to adopt a regulation requiring lessees of lots to purchase all supplies from the lessor is held, in Thousand Island Park Asso. *v.* Tucker (N. Y.) 60 L. R. A. 786, not to be reserved to an association organized for the maintenance of a camp meeting by a provision in the leases that the lessee shall keep and perform all such conditions or rules as the lessor shall from time to time impose, since such requirement is not reasonable.

Bankruptcy.

Persons negotiating for the sale and purchase of goods are held, in Goodman *v.* Herman (Mo.) 60 L. R. A. 885, not to occupy a fiduciary relation toward each other within the meaning of the section of the bankruptcy act of 1898 which prevents a release from affecting debts created by fraud while acting in any fiduciary capacity, so as to prevent the release from being operative in case the goods were obtained from the purchaser through fraud and false representations.

Banks.

Payment by the drawee of forged checks made payable to a fictitious person to one who cashed them upon an indorsement purporting to be that of the payee, without requiring identification of the one to whom payment was made, is held, in Canadian Bank of Commerce *v.* Bingham (Wash.) 60 L. R. A. 955, not to prevent his recovering back the money so paid, where he was ig-

norant of the facts, and relied upon the indorsement of the one who cashed the checks; and the latter will not be placed in a worse position by the recovery than he would have been had the checks not been paid.

Bills and Notes.

A promissory note payable at a future day to an incorporated charitable educational institution dependent for the most part on voluntary contributions for its support, the amount thereof to form by itself, or with other similar contributions, a permanent endowment fund for such institution, which is accepted by the board of directors, and in reliance upon which such institution continues its work, and incurs debts and obligations, and solicits subscriptions from others, is held, in Albert Lea College *v.* Brown (Minn.) 60 L. R. A. 870, to be supported by a sufficient consideration, and not to be revoked by the maker's death before its maturity.

The amount of a note given for medical services by an unlicensed practitioner is held, in Citizens' State Bank *v.* Nore (Neb.) 60 L. R. A. 737, to be recoverable by a bona fide purchaser, notwithstanding the provisions of a statute prohibiting the practice of medicine without a license.

Boundaries.

See JUDGMENT.

Carriers.

See also CONSTITUTIONAL LAW.

A railroad company is held, in Brunswick & W. R. Co. *v.* Ponder (Ga.) 60 L. R. A. 713, not to be liable to a passenger illegally arrested by officers of the law under color of their office, for failure to interfere and prevent the arrest, or for stopping the train to allow the officers to remove their prisoner therefrom.

The construction of a freight platform so near a railroad track that the elbow of a passenger may come in contact with freight on the platform as the passenger is seated inside of a passing car with his elbow resting on the sill of one of the windows of the car and protruding but slightly, is held, in Kird *v.* New Orleans & N. W. R. Co. (La.) 60 L. R. A. 727, to be gross negligence on the part of the railroad company, rendering it responsible in damages to a passenger injured thereby.

Only what a passenger takes with him for his own personal use and convenience is held, in Illinois C. R. Co. *v.* Matthews (Ky.) 60 L. R. A. 846, to be within the meaning of a statute requiring carriers to check baggage.

Cloud on Title.

To enable a reversioner to maintain a suit in equity to remove the cloud from his title, where the lessee, after having covenanted to pay the taxes, neglects to do so, and acquires title to the property at a tax sale, it is held, in Oppenheimer *v.* Levi (Md.) 60 L. R. A. 729, that possession is not necessary.

Commerce.

See CONSTITUTIONAL LAW.

Constitutional Law.

See also HOMESTEAD; MUNICIPAL CORPORATIONS; SCHOOLS.

Requiring an owner of property who has made and filed a valid contract for the placing of a building thereon, under which, by the terms of the statute, the entire contract price may be applied to the claims of laborers and material men, to furnish a bond which will make him liable to them in an additional amount in case their claims are not satisfied by the contractor, is held, in Gibbs *v.* Tally (Cal.) 60 L. R. A. 815, to be unconstitutional.

A statute providing that, when freight which has been shipped to be conveyed by two or more carriers to its destination under a contract by which the responsibility of one carrier ceases on delivery to the next in good order, has been lost, damaged, or destroyed, it shall be the duty of the initial or connecting carrier, on application, to trace such freight, within thirty days after the application, and inform the applicant, in writing, as to the time, place, and manner of the loss or injury, and the names of the parties by whom the truth of the facts can be established, and making a carrier who fails to

trace the freight and give such information within the prescribed time liable for the value of the freight, is held, in Central of Georgia R. Co. v. Murphey (Ga.) 60 L. R. A. 817, not to be unreasonable or unconstitutional.

A statute forbidding the purchase of a stock of goods in bulk without ascertaining the seller's creditors and having their claims settled, is held, in McDaniels v. J. J. Connelly Shoe Co. (Wash.) 60 L. R. A. 947, not to deprive the seller of his property without due process of law, and not to be void as class legislation, or as in restraint of trade.

Contracts.

A clause in a contract for a tour to conduct entertainments, the performance of which will extend into several countries, that suits upon it shall be brought in the country where the contracting parties are domiciled, is held, in Mittenthal v. Mascagni (Mass.) 60 L. R. A. 812, to be valid and enforceable by the courts of other countries.

The naming of a child for promisor in accordance with his previous request is held, in Daily v. Minnick (Iowa) 60 L. R. A. 840, to be a sufficient consideration for a subsequent promise to convey to the child a particular tract of land because of such act.

Copyright.

Where a photographer takes a photograph at the request of the sitter upon the terms that the sitter will pay for taking it, or under circumstances raising an implied promise on the sitter's part to pay, it is held in Boucas v. Cooke (1903) 2 K. B. 227, that the photograph is "made or executed for or on behalf of any other person for a good or valuable consideration," within the meaning of the English fine arts copyright act of 1862, and that the copyright in the photograph is in the sitter, notwithstanding that the property in the negative, in the absence of any agreement for its purchase, may remain in the photographer.

Corporations.

See also TAXES.

All the stockholders of a corporation whose by-laws, adopted by the stockholders in pursuance of authority given by the act of incorporation, provide that a majority vote at a stockholders' meeting shall be binding on the corporation, are held, in Hodge v. United States Steel Corporation (N. J. Err. & App.) 60 L. R. A. 742, to be bound by all acts and proceedings within the scope of the power and authority conferred by the charter which are approved and sanctioned by the vote of a majority of the stockholders duly taken and ascertained according to law.

Stockholders who have acquired their shares and their interest in the corporation from alleged wrongdoers and through prior mismanagement are held, in Home F. Ins. Co. v. Barber (Neb.) 60 L. R. A. 927, to have no standing to complain thereof.

Courts.

A judge of a court of record is held, in Webb v. Fisher (Tenn.) 60 L. R. A. 791, not to be subject to a private action for oppressively, maliciously, and corruptly entering a decree disbarring an attorney.

Covenants.

A right of entry for condition broken is held, in Bouvier v. Baltimore & N. Y. R. Co. (N. J. Err. & App.) 60 L. R. A. 750, to be transferable after breach, independent of statute, as the English law against maintenance, which forbade such a transfer, is not in force in New Jersey.

Alteration in the character of a neighborhood is held, in Osborne v. Bradley (1903) 2 C. H. 446, to be no defense to an action on a covenant restricting the use of property to residence purposes, unless it is proved, by the existence of a building scheme or otherwise, that the covenant was entered into with the object, either of securing the common advantage of a number of purchasers, or of protecting other property of the covenantee, and that the covenantee has, by his own acts or acquiescence, made it impossible to attain that object.

Damages.

The measure of damages for wrongfully

disconnecting a telephone because of a mistake as to the payment of rent is held, in Cumberland Teleph. & Teleg. Co. *v.* Hendon (Ky.) 60 L. R. A. 849, to be the amount which will compensate the patron for the injuries cause by the breach of contract.

The financial returns which a water plant can be made to bear are held, in Kennebec Water Dist. *v.* Waterville (Me.) 60 L. R. A. 856, to be necessarily considered in determining the value of the franchises of its owner when taken by right of eminent domain.

Deeds.

A deed by one to whom an undivided interest in certain land is conveyed, of all the "surface" of such land, retaining the right to maintain on the land such openings as may be necessary for ventilation, drainage, and taking out of coal, without liability for injuries to the surface by reason of mining such coal, and the right to remove the same, given to the owner of the other half interest in such land, who had previously conveyed to the grantor all the coal in, on, or underlying his undivided half of such land, with the right to make and maintain openings for ventilation and taking out of the coal, is held, in Williams *v.* South Penn Oil Co. (W. Va.) 60 L. R. A. 795, to convey to the grantee the surface only, and not to pass to the grantor's right to oil and gas in and under such land.

Ejectment.

Possessory rights only are held, in Cahill *v.* Cahill (Conn.) 60 L. R. A. 706, not to be sufficient to sustain an action of ejectment without showing the legal title.

Eminent Domain.

See DAMAGES.

Fugitives.

A person who was not corporeally present in the demanding state at the time of the commission of a crime with which he is charged, is held, in People *ex rel.* Corkran *v.* Hyatt (N. Y.) 60 L. R. A. 774, not to be a fugitive from justice in another state within the meaning of the United States Constitution, requiring the delivery up of fugitives from justice for punishment.

Gas.

See MUNICIPAL CORPORATIONS.

Highways.

See NEGLIGENCE.

Homestead.

The right of a man to convey or encumber his homestead without the co-operation of his wife, as allowed by law, is held, in Gladney *v.* Sydnor (Mo.) 60 L. R. A. 880, to be a vested one which the legislature cannot destroy, notwithstanding it may be defeated by the filing by the wife of a claim as prescribed by statute.

Homicide.

A master who whips a servant so that he dies is held, in State *v.* Shaw (S. C.) 60 L. R. A. 801, to be guilty of murder, although he has a right to inflict the punishment, and the instrument is proper, if the punishment is so prolonged and barbarous as to indicate malice.

Husband and Wife.

An injunction against a husband, in a suit which does not seek the dissolution of the marriage, to restrain him from further interference with his wife's separate estate, is held, in Dority *v.* Dority (Tex.) 60 L. R. A. 941, to be properly granted, notwithstanding the statute gives him the sole management of her estate during marriage, where he refuses to support her, and so diverts the income of her property as to deprive her of the benefit which the law entitles her to receive therefrom through his management.

Injunction.

See also HUSBAND AND WIFE.

The news of market quotations and sport-

ing items gathered and furnished by a telegraph company to its patrons by means of tickers is held, in National Teleg. News Co. v. Western U. Teleg. Co. (C. C. App. 7th C.) 60 L. R. A. 805, to be property which will be protected by equity against appropriation by rival companies who intend to furnish it to their patrons in competition with complainants to the injury or destruction of the service.

Facts with reference to contemplated buildings or improvements which have been ascertained promptly by effort and expense, and compiled and put in form for the use of contractors, having a commercial value so long as they are not generally known, are held, in F. W. Dodge Co. v. Construction Information Co. (Mass.) 60 L. R. A. 810, to be property, and entitled to protection in equity as such.

Insurance.

The breaking of a plate-glass window by the explosion of gas generated by the use of gasoline to clean clothes is held, in Vorse v. New Jersey Plate-Glass Ins. Co. (Iowa) 60 L. R. A. 838, not to be caused by the blowing up of the building, within the meaning of an insurance policy thereon which exempts the insurer from loss caused by the blowing up of buildings.

Receiving the premium after the destruction of all the insured property, so that nothing remains to which insurance might attach, is held, in German Ins. Co. v. Shader (Neb.) 60 L. R. A. 918, to waive a provision in a policy that the insurer shall not be liable for a loss occurring before payment of the premium.

Intoxicating Liquors.

See MUNICIPAL CORPORATIONS; NEGLIGENCE.

Judgment.

A judgment in a suit between the owner of property abutting on a highway and the municipality to establish the boundary of the highway is held, in Long v. Wilson (Ia.) 60 L. R. A. 720, not to be conclusive on the owner of property located on the opposite side of the street, who is not made a party to the suit, and whose access to and from his property will be interfered with if the boundary so established prevails.

Landlord and Tenant.

Under a lease of premises for the purpose of manufacturing boots and shoes, which stipulates that, upon the termination of the term, the tenant shall yield up the premises, together with all doors, locks, hearths, etc., and all buildings, improvements, and fixtures which were then or might thereafter be affixed or fastened to the premises; and providing that the tenant should not erect on the premises without the consent of the lessor any machinery other than propelled by hand or foot,—it was held, in Lanbourn v. McLellan (1903) 2 C. H. 268, that, the tenant having become a bankrupt, the trustee in bankruptcy was entitled to take and sell separately from the premises, various machines placed thereon by the tenant, which for their more convenient use were fastened by screws or nails to the floor or walls.

License.

See BILLS AND NOTES.

Master and Servant.

See ACTION.

Municipal Corporations.

An ordinance subjecting one in possession of premises on which liquor is sold, disposed of, obtained, or furnished in violation of law, to fine, whether the act is with his knowledge or consent or not, is held, in Campbellsville v. Odewalt (Ky.) 60 L. R. A. 723, to violate a constitutional provision that absolute and arbitrary power over the lives, liberty, and property of freemen exists nowhere in the republic.

A municipal corporation is held, in Muncie Natural Gas Co. v. Muncie (Ind.) 60 L. R. A. 822, to have power to stipulate as to the maximum rates to be charged by a gas company when allowing it to lay pipes in the streets, under a statute giving it

exclusive power over its streets, highways, and alleys.

General charter authority to define nuisances is held, in State *ex rel.* Indianapolis *v.* Indianapolis Union R. Co. (Ind.) 60 L. R. A. 831, not to empower a municipal corporation to declare anything a nuisance *per se* which in fact was not recognized as such by the common law.

Negligence.

The proprietors of a saloon are held, in Curran *v.* Olson (Minn.) 60 L. R. A. 733, to be liable for an injury to a guest therein caused by a third person pouring over his feet, while he was asleep, alcohol procured from the bartender, and setting fire to the same.

The storing of dynamite in a partially buried box on a vacant lot to which children are accustomed to resort to play is held, in Nelson *v.* McLellan (Wash.) 60 L. R. A. 793, to be negligence which will render the one guilty thereof liable for injuries to a child by the explosion of one of the sticks, which was taken from the box by children who had resorted to the lot to play, and ignited by one of them in ignorance of its explosive character.

The purchaser of a lot at sheriff's sale, who has not obtained any possession or control of the premises, except such as arises constructively from the delivery and recording of the sheriff's deed, is held, in Lincoln *v.* First Nat. Bank (Neb.) 60 L. R. A. 923, not to be responsible to the city, which has paid a judgment for injuries received by one falling into a negligently constructed coal hole in front of such lot three weeks after the issuance of the sheriff's deed, and while the former owner was still in possession.

A railroad company whose servants shunted some trucks and a brake van coupled together on to a siding on an incline running down a crossing over a highway, the siding having a catch point to prevent vehicles, if set loose, from running down the incline, but, for convenience of their shunting operations, did not place the trucks and van beyond the catch point, but screwed down their brakes and left them in a position in which they would not have caused any damage if not interfered with, was held, in McDowall *v.* Great Western R. Co. (1903) 2 K. B. 331, not to be liable in damages where boys trespassing on the siding uncoupled the van from the trucks and released its brakes so that it ran down the incline and injured a person passing along the highway over the crossing, although, to the knowledge of the company, boys were in the habit of trespassing on the siding and meddling with the cars, where they had never before loosed a van or vehicle.

Principal and Agent.

An agent who is authorized by his principal to sell or exchange the property of the latter upon specified prices and terms is held, in Holmes *v.* Cathcart (Minn.) 60 L. R. A. 734, to be in duty bound, upon learning that a more advantageous sale or exchange can be made, the facts concerning which are unknown to the principal, to communicate the same to him before making the sale as expressly authorized, and his failure to do so is held to amount to a fraud in law.

Property.

See INJUNCTION.

Public Improvements.

A provision in a street-paving contract, requiring the contractor to maintain the work for a period during which such a pavement, if properly made, ought to wear, is held, in People *ex rel.* North *v.* Featherstonhaugh (N. Y.) 60 L. R. A. 768, to place no illegal burden on abutting property owners, who are required to bear the original cost of the paving, although the duty to repair pavements is, by statute, placed on the city at large.

Railroads.

See NEGLIGENCE.

Schools.

The natural right of parental dominion is held, in State *v.* Jackson (N. H.) 60 L. R. A. 739, not to render unconstitutional a statute requiring children to be sent to school.

Street Railways.

Under an act providing that the promoters of tramways shall, at their own expense, keep in good condition and repair so much of the road upon which a tramway is laid as lies between the rails of the tramway; but that, if they fail to comply with the provisions of the act, the road authorities may make such repairs and charge the expense thereof to the promoters,—it was held, in Dublin United Tramway Co. *v.* FitzGerald [1903] A. C. 99, that a tramway company was liable in damages to a person injured by its failure to perform the duty of repairing the space between its rails in compliance with the provisions of the act.

Taxes.

The use of property in the business of interstate commerce is held, in Sandford *v.* Poe (C. C. App. 6th C.) 60 L. R. A. 641, not to exempt it from liability to taxation like other property within the jurisdiction in which it is situated.

The fact that a telegraph line is engaged in interstate commerce is held, in Western U. Teleg. Co. *v.* Taggart (Ind.) 60 L. R. A. 671, not to prevent a state tax on the value of that portion of the property which is within the state, although the value of the whole line as a unit is taken into account in fixing such value.

A waterworks plant owned and operated by a city is held, in Sumner County *v.* Wellington (Kan.) 60 L. R. A. 850, to be exempt from taxation, and the fact that water is furnished by the city to citizens and other consumers at prescribed rentals is held not to affect the exemption.

Telegraphs.

See DAMAGES; TAXES.

Waters.

The draining, collecting, and diverting, by a landowner, of percolating waters on his premises for the sole purpose of wasting them is held, in Stillwater Water Co. *v.* Farmer (Minn.) 60 L. R. A. 875, to be properly enjoined, where such acts will destroy or materially injure the spring of a water company which makes use of the water thereof for supplying the people of a municipality with water for domestic use.

The right to the use of water, when acquired by appropriation, is held, in Crawford Co. *v.* Hall (Neb.) 60 L. R. A. 889, to be in its nature a property right, and to become a superior and better title to the use and enjoyment of such water than that of a riparian proprietor whose right attaches subsequently.

Appropriation of considerable quantities of water in seasons when that may be done without sensible injury to lower owners is held, in Meng *v.* Coffey (Neb.) 60 L. R. A. 910, not to give a prescriptive right to divert the whole stream in dry seasons.

New Books.

"The Law of Copyright." By E. J. MacGillivray. (E. P. Dutton & Co., New York) 1 Vol. $8.

"The Mirror of Justices." Legal Classic Series. (John Byrne & Co., Washington, D. C.) 1 Vol. $3.

"The Torrens System." Its Cost and Complexity. By Wm. C. Niblack. (Callaghan & Co., Chicago, Ill.) 1 Vol. $2.

"Selection of Cases Illustrating Common-Law Pleading." With Definitions and Rules. By E. Richard Shipp and John B. Daish. (Callaghan & Co.) 1 Vol. $3.50.

"Supplement to United States Compiled Statutes." Containing Laws of 57th Congress. (For sale by L. C. P. Co., Rochester, N. Y.) 1 Vol. $4.

"Hawaiian Reports." Vol. 14. (L. C. P. Co.) $5.

"Encyclopedia of Common-Law Orders, Verdicts, and Remarks on Law Record." By John H. Best. (L. C. P. Co.) 1 Vol. $5.

"Collateral Inheritance and Transfer Tax Law of the State of New York." With Forms and Table of Cases. By Edward H. Fallows. (Baker, Voorhis & Co., New York) 1 Vol. $3.50.

"Manual for Supervisors, County and Town Officers." Containing All Statutes Relating to Boards of Supervisors, County and Town Officers, etc. With Decisions,

Annotations, and Forms. By Frank B. Gilbert. (Matthew Bender, Albany, N. Y.) 1 Vol. $6.30.

"New York Civil Procedure Reports." Vol. 33. Percival S. Menken, Editor. (S. S. Peloubet, New York.) 1 Vol. $4.

"Code Citations." A Table of Cases Construing Sections of New York Code of Civil Procedure from October 1, 1902, to October 1, 1903. (S. S. Peloubet.) 1 Vol. $1.

"A Manual for Notaries and Justices and Their Employers in Massachusetts." By James T. Keen. (Little, Brown & Co., Boston, Mass.) 1 Vol. $2.

"Treatise on Civil Procedure in Tennessee." By Noble Smithson. (Marshall Bruce Co., Nashville, Tenn.) 1 Vol.

"A Treatise on the Code Statute of Limitations." By John F. Kelly. (Frank P. Dufresne, St. Paul, Minn.) 1 Vol. $4.

Recent Articles in Law Journals and Reviews.

"Due Process of Law."—11 American Lawyer, 333.

"Presumption of Survivorship; The Common Law and Roman Law."—23 Canadian Law Times, 329.

"Physical Examination of Personal Injuries in an Action for Damages for Such Injuries."—57 Central Law Journal, 188.

"Revocation of Trust by the Settler."—57 Central Law Journal, 183.

"Whether a Statute of Limitations Barring Note and Mortgage Affects also a Power of Sale under a Deed of Trust Given to Secure It."—57 Central Law Journal, 171.

"When Does an Action Accrue for the Breach of the Implied Warranty of Title in the Sale of Chattels?"—57 Central Law Journal, 164.

"Power of Incorporated Fraternal Societies to Borrow Money and Issue Negotiable Promissory Notes."—57 Central Law Journal, 161.

"Under the Present Condition of Practice is the So-Called 'Bill of Discovery' as a Separate Proceeding Still in Force?"—57 Central Law Journal, 209.

"The Taxation of Corporate Franchises."—57 Central Law Journal, 203.

"The Historical Development of the Common-Law Conception of a Corporation."—42 American Law Register, N. S. 529.

"Validity in New York of Divorces Granted by Courts in Other States."—65 Albany Law Journal, 267.

"Limitation of a Fee upon a Fee."—65 Albany Law Journal, 271.

"Accord and Satisfaction—The Payment of a Lesser Sum than the Whole in Satisfaction of a Debt."—57 Central Law Journal, 244.

"Power of the State to Fix the Minimum Rate of Wages to be Paid to Workmen under Private or Public Employment."—57 Central Law Journal, 248.

"Extent of the Public Easement in Country Highways."—57 Central Law Journal, 225.

"In Attachment Proceedings Statutes must be Strictly Complied with."—57 Central Law Journal, 229.

The Humorous Side.

A FENCE TROUBLE.—The following is sent us from Texas:

The State of Tex }
County of ——— }

To the Shirriff or any constable of the county of ——— Tx you are hereby ordered to give notice to T. L. C. of the county of ——— and State of Tx to repare his line fence between his land and F. H. P. of the county of ——— and State of Tx and to further giv the T. L. C. or his agent to repare the above fence also to stop abusing the the cattle of F. H. P. in such a manner as it is cripling to animals of the said F. H. P. you are further to give notice to T. L. C. and his man who is riding his fence between him and F. H. P. To put all animals of F. H. P. out in a jentle maner and if T. L. C. or his agent does stop destroying the Property fence of F. H. P. by ruing cattle and other stock into the fence it is for the purpace of crippling the cattle and distroying the fence of F. H. P. give T. L. C. and his man notice that if they continue they will be prosicuted according to State Laws of Texas and you make due return heream.

Witmeuss my hand and officiel seal this the 17 day of July 1903.

F——— A. W———

Justice of The Peace *Pret.* No. 1

{Notary's Seal.} ——— County Tx.